

Before the  
Administrative Hearing Commission  
State of Missouri



KELLY AND MEGAN ABEL,	)	
	)	
Petitioners,	)	
	)	
vs.	)	No. 13-0145 RV
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

**DECISION**

Kelly and Megan Abel (the “Abels”) are liable for \$557.68 in sales tax on their purchase of a 2012 Chevrolet motor vehicle (“the 2012 Chevrolet”).

**Procedure**

On January 29, 2013, the Abels filed a complaint appealing a final decision of the Director of Revenue (the “Director”). The Director filed his answer on March 4, 2013. We held a hearing on June 27, 2013. Megan Abel appeared *pro se* by telephone. Kelly Abel did not appear. Roger Freudenberg represented the Director. This case became ready for our decision on September 16, 2013, when the final written argument was filed.

**Findings of Fact**

1. Abel Pool and Spa, Inc., owned a 2007 Chevrolet motor vehicle (“the 2007 Chevrolet”).
2. Kelly Abel is a member of the Board of Directors of Abel Pool and Spa.

3. On June 19, 2012, the 2007 Chevrolet was declared a total loss by American Family Insurance.
4. The total cash value of the 2007 Chevrolet was \$8,958.72.
5. On June 29, 2012, the Abels purchased the 2012 Chevrolet for the amount of \$17,666.
6. On July 27, 2012, the Abels titled and registered the 2012 Chevrolet.
7. The Abels claimed the total loss of the 2007 Chevrolet (\$8,958.72) and a rebate of \$250 as adjustments to the purchase price. Based on the net purchase price of \$8,457.28, the Abels paid \$526.47 in sales tax.
8. On December 21, 2012, the Director issued a final decision informing the Abels that they owed an additional \$557.68 in sales tax on the purchase of the 2012 Chevrolet.

### **Conclusions of Law**

We have jurisdiction over this case.<sup>1</sup> Our duty in a tax case is not merely to review the Director's decision, but to find the facts and determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.<sup>2</sup> Tax credits are construed strictly and narrowly against the taxpayer.<sup>3</sup>

Section 144.027.1<sup>4</sup> provides:

When a motor vehicle ... for which all sales or use tax has been paid is replaced due to ... a casualty loss in excess of the value of the unit, the director shall permit the amount of the insurance proceeds plus any owner's deductible obligation, as certified by the insurance company, to be a credit against the purchase price of another motor vehicle ... which is purchased or is contracted to purchase within one hundred eighty days of the date of payment by the insurance company as a replacement motor vehicle[.]

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<sup>1</sup>Section 621.050.1, RSMo 2000.

<sup>2</sup>*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. 1990).

<sup>3</sup>*Hermann v. Director of Revenue*, 47 S.W.3d 362, 365 (Mo. 2001).

<sup>4</sup>RSMo 2000.

The word “replace” is not defined in the statute. “When a word is not defined by statute, it is defined according to its plain and ordinary meaning as derived from the dictionary.”<sup>5</sup>

“Replace” is defined as “to take the place of: serve as a substitute for or successor of.”<sup>6</sup>

The Director correctly asserts that the Abels cannot claim a refund based on § 144.027 unless the new vehicle and the replaced vehicle have the same owner of record. An “owner” is “any person, firm, corporation or association, who holds the legal title to a vehicle[.]”<sup>7</sup> A “person” includes:

... any **individual**, firm, copartnership, joint adventure, association, **corporation**, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, except the state transportation department, estate, trust, business trust, receiver or trustee appointed by the state or federal court, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number[.]<sup>8</sup>

Individuals and corporations are both “persons.”

The statute does not contain direct language stating the owner of the totaled vehicle must also title the replacement vehicle. We find, however, that only owners of both the totaled vehicle and the replacement vehicle can obtain the credit in § 144.027.1. A replacement vehicle substitutes for, or takes the place of, the previous vehicle. Logically, there can only be a substitute when one person owned both the totaled vehicle and the replacement vehicle.

In this case, Abel Pool and Spa owned the 2007 Chevrolet. The Abels did not own the 2007 Chevrolet. Their sole interest in the 2007 Chevrolet was that Kelly Abel was an officer of Abel Pool and Spa. The Abels titled the 2012 Chevrolet. The 2012 Chevrolet did not replace a vehicle that either Megan or Kelly Abel owned. Therefore, the Abels are not entitled to a credit against the sales tax on the 2012 Chevrolet.

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<sup>5</sup> *Bateman v. Rinehart*, 391 S.W.3d 441, 450 (Mo. 2013).

<sup>6</sup> *Webster’s Third New International Dictionary* 1925 (1986) (unabridged).

<sup>7</sup> Section 301.010.1(42), RSMo Cum. Supp. 2012.

<sup>8</sup> Section 144.010(7), RSMo Cum. Supp. 2012 (emphasis added).

### **Summary**

The Abels are liable for \$557.68 in sales tax on the purchase of the 2012 Chevrolet.

SO ORDERED on October 9, 2013.

\s\ *Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner